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JEFFERY LAW SIEW SU & ORS v. YU GUI

FEDERAL COURT, PUTRAJAYA
MD RAUS SHARIF PCA
SURIYADI HALIM OMAR FCJ
ZAINUN ALI FCJ
B BALIA YUSOF WAHI FCJ
JEFFREY TAN FCJ
[CIVIL APPEAL NO: Q-02(i)-068-10-2016]
28 MARCH 2017

C ***CIVIL PROCEDURE:*** *Injunction – Ex parte injunction – Undertaking as to damages caused by injunction – Whether undertaking given voluntarily – Whether damages had been suffered – Whether causal link between injunction and damage established*

D On 29 June 2009, the plaintiffs ('appellants') obtained an *ex parte* injunction against the respondent ('second defendant') and four other defendants. On 20 September 2009, the High Court set aside that *ex parte* injunction and ordered that the damages occasioned thereby to be assessed by the Deputy Registrar and to be paid by the appellants to the defendants. The appellants' appeal against the order was dismissed by the Court of Appeal. Hence, the E Senior Assistant Registrar ('SAR') proceeded to assess the damages and surmised that the quantum of damages to be assessed was 'the loss suffered by the defendants in particular by the respondent for the setting up of the factory and/or any other loss due to the said injunction'. At the close of the inquiry, the SAR ruled that the respondent suffered losses amounting to F RM1,557,882.04. Thereafter, the appellants appealed to the judge-in-chambers, who allowed the appeal and set aside the order of the SAR. However, the SAR's decision was restored by the Court of Appeal upon appeal by the respondent. Hence, the appellants obtained the leave of the Federal Court to raise the following questions of law: (i) whether the 'causal G link' between the injunction and the damage suffered is to be determined by the 'but for' test between the injunction and the damage suffered (or) is to be determined by the 'loss of chance' test which is a test in contract law or both; (ii) whether the 'foreseeable test' is applicable in determining the 'causal link' between the injunction and the damage suffered if it is determined that the H 'loss of chance' test is applicable when determining the 'causal link' between the injunction and the damage suffered; and (iii) if it is determined that the 'loss of chance' test is applicable when determining the 'causal link' between the injunction and the damage suffered, whether it is in law necessary to establish a 'successive sufficient cause' giving rise to liability and whether the liability could be negated by *novus actus interveniens*.

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Held (allowing appeal; setting aside order of Court of Appeal and restoring order of High Court)
Per Jeffrey Tan FCJ delivering the judgment of the court:

(1) The *ex parte* order dated 29 June 2009 contained an undertaking by the appellants to, *inter alia*, abide by any order as to damages made by the court. The undertaking, which must be voluntary, is for the purpose of vesting the court with the jurisdiction to make the appropriate orders to recompense the loss suffered by the party who is enjoined when it is subsequently established that the applicant was not entitled to the injunction in the first place. The undertaking is not given to the defendant but to the court itself and its non-performance would amount to contempt of court. Although the undertaking was for the defendant's benefit, whether an inquiry as to damages should be ordered lies with the discretion of the trial judge. (para 7)

(2) The fact that an inquiry/assessment of damages has been directed does not raise a presumption that damage has in fact been suffered. At the inquiry, the onus is on the defendant to prove both the fact of damage and its causation. Hence, *prima facie*, the undertaking must be shown to be the exclusive cause of the loss, though this does not mean that every conceivable or theoretical cause of the damage must be dealt with. There must be a causal link between the injunction and the damage suffered by the defendant. (para 8)

(3) Although the order to the SAR was to assess damages occasioned by the injunction, the SAR went off on a tangent and proceeded to assess 'the loss suffered by the defendants in particular for the respondent for the setting up of the factory and/or any other loss due to the said injunction'. The factory had closed even before the grant of the *ex parte* injunction. Since the two events – closure of the factory and service of the *ex parte* injunction – were separated by time, there could not have been a causal link between the *ex parte* injunction and damages claimed. It was not possible that the *ex parte* injunction could have occasioned the loss of past investments/outgoings. Without the causal link, the award of damages could not be sustained in law. Hence, the appeal was disposed without the need to answer the leave questions. (para 9)

***Bahasa Malaysia** Headnotes*

Pada 29 Jun 2009, plaintif-plaintif ('perayu-perayu') memperolehi injunksi *ex parte* terhadap responden ('defendan kedua') dan empat defendan lain. Pada 20 September 2009, Mahkamah Tinggi mengetepikan injunksi *ex parte* tersebut dan memerintahkan kerugian akibat daripadanya ditaksir oleh Timbalan Pendaftar dan dibayar oleh perayu-perayu kepada defendan-defendan. Rayuan perayu-perayu terhadap perintah tersebut ditolak oleh

Mahkamah Rayuan. Oleh itu, Penolong Kanan Pendaftar ('PKP') mentaksir ganti rugi dan mengagak bahawa kuantum ganti rugi yang ditaksir adalah 'kerugian yang dialami oleh defendan-defendan khususnya oleh responden bagi menubuhkan kilang dan/atau apa-apa kerugian lain yang diakibatkan oleh injunksi tersebut'. Di akhir pentaksiran, PKP memutuskan bahawa responden mengalami kerugian sejumlah RM1,557,882.04. Selepas itu, perayu-perayu merayu kepada hakim dalam kamar, yang membenarkan rayuan dan mengetepikan perintah PKP. Walau bagaimanapun, keputusan PKP dikembalikan oleh Mahkamah Rayuan atas rayuan responden. Dengan itu, perayu-perayu memperoleh kebenaran Mahkamah Persekutuan untuk membangkitkan persoalan undang-undang berikut: (i) sama ada 'rantaian penyebab' antara injunksi dan kerugian yang dialami ditentukan oleh ujian 'but for' antara injunksi dan kerugian yang dialami (atau) perlu ditentukan oleh ujian 'loss of chance' yang merupakan ujian dalam undang-undang kontrak atau kedua-duanya; (ii) sama ada ujian 'foreseeable' diguna pakai dalam menentukan 'rantaian penyebab' antara injunksi dan kerugian yang dialami jika diputuskan bahawa ujian 'loss of chance' diguna pakai dalam menentukan 'rantaian penyebab' antara injunksi dan kerugian yang dialami; dan (iii) jika diputuskan bahawa ujian 'loss of chance' diguna pakai apabila menentukan 'rantaian penyebab' antara injunksi dan kerugian yang dialami, sama ada dari segi undang-undang perlu dibuktikan 'successive sufficient cause' yang menjurus pada kebertanggungan dan sama ada tanggungan boleh dipatahkan oleh *novus actus interveniens*.

Diputuskan (membenarkan rayuan; mengetepikan perintah Mahkamah Rayuan dan mengembalikan perintah Mahkamah Tinggi)
Oleh Jeffrey Tan HMP menyampaikan penghakiman mahkamah:

(1) Perintah *ex parte* bertarikh 29 Jun 2009 mengandungi aku janji oleh perayu-perayu untuk, antara lain, mematuhi apa-apa perintah berkaitan ganti rugi yang dibuat mahkamah. Aku janji tersebut, yang sepatutnya dibuat secara sukarela, bertujuan meletak hak pada mahkamah, bidang kuasa untuk membuat perintah-perintah wajar untuk memampasi kerugian yang dialami oleh pihak yang digabungkan apabila kemudiannya dibuktikan bahawa pemohon tidak berhak mendapat injunksi dari mula lagi. Aku janji tidak diberi kepada defendan tetapi terus kepada mahkamah dan kegagalan melaksanakannya akan membentuk penghinaan mahkamah. Walaupun aku janji adalah untuk faedah defendan, sama ada siasatan ganti rugi perlu diperintahkan terletak pada budi bicara hakim bicara.

(2) Fakta bahawa siasatan/pentaksiran ganti rugi diperintahkan tidak membangkitkan anggapan bahawa kerugian telah dialami. Dalam siasatan, beban terletak pada defendan untuk membuktikan kedua-dua fakta kerugian dan penyebab. Oleh itu, *prima facie*, aku janji mesti dibuktikan adalah, secara eksklusifnya, penyebab kerugian, walaupun

ini tidak bermaksud setiap penyebab kerugian yang boleh difikirkan atau secara teori mesti diputuskan. Perlu wujud rantaian penyebab antara injunksi dan kerugian yang dialami defendan.

(3) Walaupun perintah kepada PKP adalah untuk mentaksir ganti rugi yang diakibatkan oleh injunksi, PKP melencong dan meneruskan dengan mentaksir 'kerugian yang dialami oleh defendan-defendan khususnya oleh responden bagi menubuhkan kilang dan/atau apa-apa kerugian lain yang diakibatkan oleh injunksi tersebut'. Kilang tersebut telah ditutup sebelum injunksi *ex parte* dibenarkan. Oleh sebab kedua-dua peristiwa – penutupan kilang dan penyerahan injunksi *ex parte* – diasingkan oleh masa, tidak mungkin wujud rantaian penyebab antara injunksi *ex parte* dan ganti rugi yang dituntut. Tiada kemungkinan bahawa injunksi *ex parte* menyebabkan kerugian pelaburan atau wang keluar yang terdahulu. Tanpa rantaian penyebab, award ganti rugi tidak boleh dikekalkan dari segi undang-undang. Dengan itu, rayuan dibuang tanpa keperluan untuk menjawab soalan-soalan bagi kebenaran.

Case(s) referred to:

Air Express Ltd v. Ansett Transport Industries (Operations) Pty Ltd (1979) 33 ALR 578 ***(refd)***
Allen v. Jambo Holdings Ltd [1980] 2 All ER 502 ***(refd)***
Attorney-General v. Albany Hotel Company [1896] 2 Ch 696 ***(refd)***
Cheng Hang Guan & Ors v. Perumahan Farlim (PG) Sdn Bhd & Ors [1988] 2 CLJ 35; [1988] 1 CLJ (Rep) 435 HC ***(refd)***
F Hoffmann-La Roche & Co AG and Others v. Secretary of State for Trade and Industry [1975] AC 295 ***(refd)***
Fraser & Neave Ltd v. Yeo Hiap Seng Ltd [1988] SLR 96 ***(refd)***
GS Gill Sdn Bhd v. Descente Ltd [2010] 5 CLJ 613 FC ***(refd)***
Sunseekers Pte Ltd v. JSH Joshua [1990] 1 CLJ 1048; [1990] 3 CLJ (Rep) 979 HC ***(refd)***
Tharros Shipping Co Ltd v. Bias Shipping Ltd [1994] 1 Llyod's Rep 577 ***(refd)***
Triodos Bank NV v. Dobbs [2005] EWHC 108 ***(refd)***
Yu Gui v. Jeffery Law Siew Su & Ors [2016] 7 CLJ 540 CA ***(refd)***

Other source(s) referred to:

David Bean, Andrew Burns & Isabel Parry, *Injunctions*, 11th edn, pp 6-07
Kerr on Injunctions, 6th edn, p 667
Tan Woon Tiang & Koh Kok Wah, *Interlocutory Injunctions*, p 12

For the appellants - Alvin Yong & Shirleen Ong; M/s Chong Brothers Advocs
For the respondent - Ernest Chua; M/s Ernest Chua & Co Advocs

[Editor's note: For the Court of Appeal judgment, please see Yu Gui v. Jeffery Law Siew Su & Ors [2016] 7 CLJ 540 (overruled).]

Reported by S Barathi

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JUDGMENT

Jeffrey Tan FCJ:

[1] On 29 June 2009, the High Court granted an *ex parte* injunction to the appellants/plaintiffs against the respondent/second defendant and four other B defendants. That *ex parte* injunction ordered (i) return by the fifth defendant of the subject in dispute (two containers of veneer), (ii) payment by the first to third defendants (shareholders of the fourth defendant company - Rich Efficient Wood Industries Sdn Bhd) of the proceeds of sale of the fourth defendant's goods to the fourth defendant, (iii) disclosure by the first to third defendants of the assets of the first to third defendants, (iv) cross-examination C of the first to third defendants on their affidavits, as well as granted a *Mareva* injunction against the first to third defendants who were ordered not to leave Sarawak until conclusion of their cross-examination.

[2] On 20 September 2009, the High Court set aside that *ex parte* D injunction and ordered "damages occasioned thereby to be assessed by the Deputy Registrar and to be paid by the (appellants/plaintiffs) to the defendants". The appellants appealed against the order dated 29 September 2009. But that appeal was dismissed by the Court of Appeal on 15 October 2009. The learned Senior Assistant Registrar (SAR) then proceeded to assess E the "damages occasioned".

[3] The respondent and other defendants claimed a total loss of RM12,064,667.48. The learned SAR surmised that the quantum of damages to be assessed was "the loss suffered by the defendants in particular (by) the (respondent) for the setting up of the factory and or any other loss due to the F said injunction". At the close of the inquiry, the learned SAR ruled that the respondent suffered the following losses that aggregated to RM1,557,882.04:

> From all the evidence tendered I hereby allow the damages as follows:
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> (i) RM896,248.00 for the purchase of furniture, machineries, machine parts, etc. This would be allowed in the sum of RM500,000.00 this G is based on the reason that as being testified during the hearing of the assessment of damages itself that only one machine was brought in and the other machine [had] been planted and existed in the said factory affixed and was provided by the landlord.
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> (ii) Claim of RM420,000.00 for payment of rental deposit and rental to H Ong Seng Guan, the owner of the factory land to be deducted in the sum of RM50,000.00 as the Plaintiff did contribute to the same at the initial stage of setting up the said factory, so the amount allowed would be RM370,000.00.
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> (iii) RM44,719.00 for air ticket charges and insurance premium for 12 workers from China hereby allowed in total of the whole sum. I

(iv) RM44,176.00 for freight and customs charges for machineries from China allowed in total sum claimed as the Defendant succeed[ed] in showing all the relevant evidence, receipt and vouchers.

(v) RM20,000.00 for petty cash expenses allowed in total as this would be a reasonable amount to be claimed as per setting up a business.

(vi) RM16,570.00 for factory miscellaneous this would be allowed in total as well.

(vii) RM546,302.44 for salaries of workers from China and Bangladesh allowed [in] the sum of RM300,000.00 as the total was too excessive to [be] allow[ed] the whole sum as the rest [could] be covered under other miscellaneous expenses.

(viii) RM59,900.00 on hardware accessories and cutter this claim would also be allowed in total as per claimed.

(ix) RM102,517.04 on staff quarters renovations as the defendant did manage to [prove] all the expenses as claimed.

(x) RM135,660.00 to buy machineries from Taiwan. This was also allowed in the sum of RM100,000.00 as there [were] some other machineries that already existed in the said factory and was admitted by parties as well.

The following are hereby dismissed as the 2nd Defendant failed to prove to the court the expenses which accumulated to the following sum ...

[4] The appellants appealed to judge-in-chambers. The learned judge first held that "the burden is upon the (respondent) to prove that he sustained loss and damages as a result of the injunction order obtained by the (appellants) against him and the fourth defendant". The learned judge found that all alleged monetary contribution and expenditure of the respondent were expended at the time when the fourth defendant was set up, and incisively asked "in what way (could) those monetary contributions and expenditure (be) damages (occasioned) by the injunction?" The learned judge allowed the appeal and set aside the order of the learned SAR:

DW2 testified that the factory was closed down on 15th June, 2009 because the 1st Plaintiff sealed it. The established evidence shows that the injunction order was granted only on 29th June, 2009, which was 14 days after the closure. What it shows is that the 4th Defendant had already closed down its operation even before the injunction order was made. Hence, by all accounts, it cannot be said that the loss suffered by the 1st Defendant as the result of the closure of the 4th Defendant company [was] occasioned by the injunction order. In other words, the 1st Defendant has failed to prove a causal link between the alleged loss and damage and the injunction order. Hence, I allow the appeal with costs of RM2,000.00.

[5] Against that latter order of the learned judge, the respondent appealed to the Court of Appeal who allowed the appeal and restored the award of the learned SAR (see *Yu Gui v. Jeffery Law Siew Su & Ors* [2016] 7 CLJ 540; [2016] 1 MLJ 102). The appellants soon obtained leave to raise the following "questions of law".

(a) Whether the "causal link" between the injunction and the damage suffered as set out in *Goo Sing Kar v. Dato Lim Ah Chap & Ors* [2013] 3 MLJ 374 is to be determined by the "but for" between the injunction and the damage suffered [or] is to be determined by the "loss of chance test" as set out in *Chaplin v. Hicks* [1911] All ER 224 which is a test in contract law or both.

(b) Whether the "foreseeable test" as propounded in the *Wagon Mound* [1961] AC 388 is applicable in determining the "causal link" between the injunction and the damage suffered if it is determined that the "loss of chance" test as set out in *Chaplin v. Hicks* [1911] All ER 224 is applicable when determining the "causal link" between the injunction and the damage suffered.

(c) If it is determined that the "loss of chance" test as set out in *Chaplin v. Hicks* [1911] All ER 224 is applicable when determining the "causal link" between the injunction and the damage suffered, whether it is in law necessary to establish a "successive sufficient cause" giving rise to liability and whether the liability can be negated by *Novus Actus Interveniens.*

[6] On 7 February 2017, we heard and allowed the appeal. We set aside the order of the Court of Appeal and restored the order of the learned judge of the High Court. We now give our reasons for our decision.

[7] Inserted in the *ex parte* order dated 29 June 2009 extracted by the appellants was an undertaking by the appellants "to abide by any order that the honourable court may make as to damages in case the court should hereafter be of the opinion that the first to fifth defendants have sustained ... by reason of this order which the plaintiffs ought to pay". It is, but of course, "the usual rule of the court, that an applicant for an interlocutory injunction must give an undertaking to be answerable in damages as a condition of his obtaining the injunction ... Upon drawing up an order for an interlocutory injunction, the Registrar invariably inserts such an undertaking on the part of the plaintiff, even though, as frequently happens, it has not been mentioned in court, but has been taken for granted. Of course such an undertaking must be voluntary: the court cannot compel a person to give an undertaking; and, if the plaintiff declines to give it, either in court or before the Registrar, the order will not be made, or, if pronounced, will not be drawn up" (*Attorney-General v. Albany Hotel Company* [1896] 2 Ch 696 per North J). "The purpose of the undertaking is to vest the court with the jurisdiction to make the appropriate orders to recompense the loss suffered

by the party who is enjoined when it is subsequently established that the applicant was not entitled to the injunction in the first place" (*Interlocutory Injunctions* by Tan Woon Tiang and Koh Kok Wah at p. 12). "This requirement applies even if the plaintiff has no assets and is legally aided: *Allen v. Jambo Holdings Ltd* [1980] 2 All ER 502. It is true, that perhaps, in such circumstances the undertaking is an empty shell and should not, therefore, be demanded since the maxim is that equity does not act in vain. But the response to this argument is that such a plaintiff may win damages at the trial and yet may have wrongly obtained an interlocutory injunction as in *Barclays Bank Ltd v. Rosenberg Financial Times*, 12 June 1985. In such an eventuality, the damages awarded would constitute assets available to meet the liability on the undertaking" (*Cheng Hang Guan & Ors v. Perumahan Farlim (PG) Sdn Bhd & Ors* [1988] 2 CLJ 35; [1988] 1 CLJ (Rep) 435; [1988] 3 MLJ 90 per Edgar Joseph Jr J, as he then was). "The practice of exacting an undertaking as to damages from a plaintiff to whom an interim injunction is granted originated during the Vice Chancellorship of Sir James Knight Bruce who held that office from 1841 to 1851. At first, it applied only to injunctions granted *ex parte* but after 1860 the practice was extended to all interlocutory injunctions. By the end of the century, the insertion of such an undertaking in all orders for interim injunctions granted in litigation between subject and subject had become a matter of course ... The court has no power to compel an applicant for an interim injunction to furnish an undertaking as to damages. All that it can do is to refuse that application if he declines to do so. The undertaking is not given to the defendant but to the court itself. Non-performance of it is contempt of court, not breach of contract, and attracts the remedies available for contempt; but the court exacts the undertaking for the defendant's benefit. It retains a discretion not to enforce the undertaking if it considers that the conduct of the defendant in relation to the obtaining or continuing of the injunction or the enforcement of the undertaking makes it inequitable to do so ... " (*F Hoffmann-La Roche & Co AG and Others v. Secretary of State for Trade and Industry* [1975] AC 295, at 360-361 per Lord Diplock). But " ... whether an inquiry as to damages should be ordered lies with the discretion of the trial judge. It is not for the defendant to insist that such inquiry should be made" (*GS Gill Sdn Bhd v Descente Ltd* [2010] 5 CLJ 613; [2010] 4 MLJ 609 per James Foong FCJ, delivering the judgment of the court).

[8] "The fact that an inquiry/assessment of damages has been directed ... does not raise a presumption that damage has in fact been suffered" (*Fraser & Neave Ltd v. Yeo Hiap Seng Ltd* [1988] SLR 96 per Wee Chong Jin CJ). "At the inquiry, the onus is on the defendant to prove both the fact of damage and its causation (*Tharros Shipping Co Ltd v. Bias Shipping Ltd* [1994] 1 Llyod's Rep 577). The assessment is made on the same basis as that on which damages for breach of contract would be assessed if the undertaking had been

a contract between the claimant and the defendant that the claimant would not prevent the defendant from doing the act prohibited by the injunction (*Hoffman-La Roche & Co AG v. Secretary of State for Trade and Industry* [1975] AC 295 at 361, per Lord Diplock). The defendant must show that both the type of loss and any links in the chain of causation can reasonably be regarded as having been in the contemplation of the parties when the injunction was granted (*Tharros Shipping* case, above, per Waller J). Causation must be established not simply on a "but for" basis; *prima facie* the undertaking must be shown to be the exclusive cause of the loss, though this does not mean that every conceivable or theoretical cause of the damage must be dealt with (*Triodos Bank NV v. Dobbs* [2005] EWHC 108 (Ch), Lightman J.)" (*Injunctions* by David Bean, Andrew Burns and Isabel Parry 11th edn at 6-07). There must be a causal link between the injunction and the damage suffered by the defendant (see *Sunseekers Pte Ltd v. JSH Joshua* [1990] 1 CLJ 1048; [1990] 3 CLJ (Rep) 979; [1990] 2 MLJ 350 per Chan Sek Keong J, as he then was). "In the end ... the question becomes one of fact: did the making of the order cause the loss? The onus of proof must, in accordance with general principles, lie on the defendant who asserts that he sustained damage by reason of the order" (*Air Express Ltd v. Ansett Transport Industries (Operations) Pty Ltd* (1979) 33 ALR 578 per Gibbs J).

[9] The order of the learned High Court Judge to the learned SAR was to assess damages occasioned by the *ex parte* injunction. That order was wholly at one with the principle that damages assessed and awarded must be damages occasioned by the injunction. But the inquiry of the learned SAR, with respect to him, was wholly out of kilter. For that inquiry ensued entirely on the wrong basis. By right, that inquiry should assess "the loss which is the natural consequence of the injunction under the circumstances of which the party obtaining the injunction has noticed at the time when he makes his application (*Kerr on Injunctions,* 6th edn at 667). The order to the learned SAR was to assess damages occasioned by the injunction. It was a simple direction to follow. Yet the learned SAR went off on a tangent and proceeded to assess "the loss suffered by the defendants in particular for the (respondent) for the setting up of the factory and or any other loss due to the said injunction". At the end of it, the learned SAR awarded (i) RM500,000 "for the purchase of furniture, machinery, machine parts, etc", (ii) RM370,000 "for payment of rental deposit and rental to Ong Seng Guan, the owner of the factory land", (iii) RM44,719 "for air ticket charges and insurance premium for 12 workers from China", (iv) RM20,000 "for petty cash expenses", (v) RM16,570 "for factory miscellaneous", (vi) RM300,000 "for salaries of workers from China and Bangladesh", (vii) RM59,900 "on hardware accessories and cutter", (viii) RM102,517.04 "on staff quarters renovation", and (ix) RM100,000 "to buy machineries from Taiwan". Not a sen was awarded for damages occasioned by the *ex parte* injunction. The

entire damages awarded were for the "setting up" of the factory and towards the outgoings of the factory or its operations. The sum/s invested for the setting up of the factory and towards the outgoings of the factory or its operations was/were the basis upon which the damages were measured. It should be reiterated that damages could not be awarded unless occasioned by the *ex parte* injunction. But what or where was the causal link between the *ex parte* injunction and the damages claimed? The factory had closed even before the grant of the *ex parte* injunction. Given that the factory had already closed, then it could be surmised that all sum/s invested for the setting up of the factory and towards the outgoings of the factory or its operations were expended well before the grant or service of the *ex parte* injunction. Since the two events - closure of the factory and service of the *ex parte* injunction - were separated by time, then there could not have been a causal link between the *ex parte* injunction and damages claimed. While the present could affect the future, it could not affect the past. Hence, it was not possible that the *ex parte* injunction could have occasioned the loss of past investments/outgoings. But even if the two events - closure of the factory and service of the *ex parte* injunction - coincided, it must yet still be shown that it was the *ex parte* injunction that caused the damages claimed. And in the instant case, we could not imagine how an *ex parte* injunction that ordered (i) return of two containers of veneer, (ii) payment of the proceeds of sale to the fourth defendant, (iii) disclosure of assets, (iv) cross-examination of parties on their affidavits, (v) non-dissipation of assets, as well as ordered the first to third defendants not to leave Sarawak until the conclusion of their cross-examination, could possibly cause the damages claimed "for the purchase of furniture, machineries, machine parts, etc" "for payment of rental deposit and rental to Ong Seng Guan, the owner of the factory land", "for air ticket charges and insurance premium for 12 workers from China" "for petty cash expenses" "for factory miscellaneous", "for salaries of workers from China and Bangladesh", "for hardware accessories and cutter", "for staff quarters renovation", and "for machineries from Taiwan". The return of the two containers could disrupt the factory production. Perhaps, the first to third defendants were inconvenienced by the order to remain in Sarawak. But otherwise, the orders of the *ex parte* injunction, or any one or a combination of them, could not have caused the claimed loss. It was so plain and obvious that there could not have been a causal link between the *ex parte* injunction and the damages claimed. With respect, the claim for damages could not bear a moment's examination. When we heard the appeal, we found ourselves at a total loss to explain how the Court of Appeal could restore the order of the learned SAR. Learned counsel for the respondent could also not enlighten us on the causal link. Without the causal link, the award of damages could not

A be sustained in law. The issue was as basic as that. It was never as thorny and on a knife edge as suggested by the leave questions. The appeal was disposed of without the need to answer the leave questions.

[10] It was for those reasons that we allowed the appeal with costs, for here and below, of RM30,000, set aside the order of the Court of Appeal and
B restored the order of the learned judge of the High Court.

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